



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, CNR, FF

Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the “Act”).

The tenant seeks:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) pursuant to section 46; and
- recovery of filing fees from the landlord.

The landlord seeks:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses

The landlord testified that she served the tenant with the 10 Day Notice on January 1, 2017 by posting a copy on the rental unit door. The tenant confirmed receipt of the 10 Day Notice. I find that the tenant was duly served with the landlord's 10 Day Notice in accordance with section 88 of the *Act*, on January 4, 2017, three days after posting.

The landlord testified that she was served with a copy of the tenant's application for dispute resolution on January 6, 2017. I find that the landlord was duly served with the tenant's application in accordance with section 89 of the *Act* on that date.

The landlord testified that she served the landlord's application for dispute resolution dated January 10, 2017 by posting it on the rental unit door on that same date in the presence of her agent and witness. The tenant denied receiving a copy of the landlord's application, repeatedly challenging the landlord as to where the application was posted. The landlord testified that the application was posted on the front door in the same manner as the 10 Day Notice, and was posted in the presence of a witness.

The landlord also testified that an electronic copy was later sent to the tenant. The tenant was aware of the content and substance of the landlord's application and eventually acknowledged that he had received a copy of the landlord's application. In accordance with the powers delegated to me pursuant to paragraph 71(2)(c) of the *Act*, I find that the tenant was sufficiently served with the landlord's application for dispute resolution for the purposes of the *Act*.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed the tenants have failed to pay the January rent amount and that the total arrears including rent owing and utility fees as of the date of the hearing is \$9,062.18. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the landlords' Application to increase the landlord's monetary claim from \$6,312.18 to \$9,062.18.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary order for unpaid rent as claimed?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The parties agreed on the following facts. This tenancy began in October, 2016. The monthly rent is \$2,750.00 payable on the 15th of each month. Utilities are not included in the rent amount and the tenant pays the landlord the cost of the heating and electricity when bills are issued by the utility companies. The tenant paid a security deposit of \$1,350.00 at the commencement of the tenancy and the amount is currently held by the landlord.

The landlord testified that the tenant has failed to pay the monthly rent for November and December. The landlord submitted into written evidence copies of two rent cheques issued by the tenant which were returned, not sufficient funds. The landlord testified that the tenant also owes \$812.18 for utilities. The landlord said that the rent was in arrears by \$6,312.18 when the 10 Day Notice was issued. In addition, the tenant has now failed to pay the January rent.

The tenant testified that he made payment in the amount of \$5,800.00 on December 31, 2016 and there was no rental arrear when the 10 Day Notice was issued. The tenant testified that he was out of the province on that date, and he arranged for his employee

to take \$5,800.00 in cash and pay the landlord. The tenant said the amount represents two months of rent and utility payments. The tenant testified that the employee who delivered the payment is also a resident at the dispute address. The tenant said that he was informed by his employee that payment was accepted by the landlord but no receipt was issued. The tenant testified that he has not paid rent for January as he wanted to see the outcome of this hearing.

Analysis

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. In the present case the landlord testified that there was a rent arrear of \$6,312.18 at the time the 10 Day Notice was issued. The tenant denies that there was a rental arrear and testified that he had arranged for a payment of \$5,800.00 to be delivered on December 31, 2016.

I find the tenant's testimony lacks plausibility or credibility. I do not find it reasonable that someone would rely on a third party to deliver a substantive cash payment on their behalf without requesting any written evidence that payment was received. The tenant testified that he trusts his employee and has previously entrusted him to handle upwards of \$40,000.00 cash on his behalf and had no reason to request a receipt. I do not find this behaviour to be reasonable. The tenant had already issued two dishonoured cheques to the landlord at that time. He was aware that his rent was in arrears. A reasonable individual who intended to make a significant rental payment in cash would have requested a receipt or some proof that payment was accepted by the landlord. The tenant had the opportunity to provide evidence in support of his version of events but failed to do so. The tenant did not call his employee as a witness nor did he provide a sworn statement of the employee's evidence. The tenant provided no substantive evidence of this purported payment or existence of this supposed employee. I find that the tenant's testimony lacks credibility and for that reason I dismiss the tenant's application.

I accept the landlord's evidence that there was a rental arrear in the amount of \$6,312.18 when the 10 Day Notice was issued and that the tenant failed to pay the full rent due within the 5 days of service. Accordingly, I find that the tenancy ended on the corrected effective date of the 10 Day Notice, January 14, 2017. Therefore I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the landlord's evidence that the total amount of arrears for this tenancy is \$9,062.18. This figure included the \$2,750.00 in unpaid rent owing for each of November and December, 2016, January 2017, and the unpaid utility bills of \$812.18. I issue a monetary award for unpaid rent owing of \$9,062.18 as at January 31, 2017, the date of the hearing, pursuant to section 67 of the *Act*.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$1,350.00 security deposit in partial satisfaction of the monetary award issued in the landlords' favour.

Conclusion

The tenant's application to cancel the 10 Day Notice is dismissed. I allow the landlord's application for an Order of Possession based on the 10 Day Notice. I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$7,712.18 under the following terms, which allows the landlord to recover unpaid rent and utilities for the months of November, December, and January:

Item	Amount
Unpaid Rent November	\$2,750.00
Unpaid Rent December	\$2,750.00
Unpaid Utilities	\$812.18
Unpaid Rent January	\$2,750.00
Less Security Deposit	-\$1,350.00
Total Monetary Order	\$7,712.18

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 7, 2017

Residential Tenancy Branch

